



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Laura A. Sacks

File: B-253485

Date: October 7, 1993

DIGEST

An employee on an authorized "house-hunting trip" was unable to find a rental apartment in the area of Boston, Massachusetts, without paying a real estate broker a fee to find her one. The employee extensively documented her efforts, and the agency accepts her evidence and wishes to reimburse her. While the Federal Travel Regulation does not have any provision for the reimbursement of that type of fee as such, we find that such a fee may be allowed as a miscellaneous expense under the special provisions of 41 C.F.R. § 302-3.3(b) (1992) provided that the agency determines the use of a real estate broker to find a rental apartment is customary in the Boston area.

DECISION

The National Labor Relations Board (NLRB) requests an advance decision as to whether it may certify for payment an additional claim of \$300 for a real estate broker's fee to help find a rental apartment which was paid by its employee, Ms. Laura A. Sacks.¹ For the following reasons, we conclude that the NLRB may reimburse the employee for such a fee as a miscellaneous expense under the special provisions of 41 C.F.R. § 302-3.3(b) (1992), provided that it determines the use of a real estate broker to find a rental apartment is customary in the Boston area.

Ms. Sacks was transferred in the interest of the government from NLRB's New York office to its Boston, Massachusetts, office in 1993 and the NLRB determined prior to her transfer that a "house-hunting trip" under the Federal Travel Regulation, 41 C.F.R. Part 302-4 was necessary. She began her "house-hunting trip" on February 3, 1993. Due to the fact that it is very difficult to find suitable housing in the

¹This matter was submitted by Mr. Kenneth E. Green, Certifying Officer, Finance Office, National Labor Relations Board, Washington, D.C.

Boston area without the assistance of a real estate broker, Ms. Sacks paid \$1,300 to Maven Realty, Inc., on February 11, 1993, as a "relocation fee" to help her find a rental apartment, which it did. We note that Ms. Sacks has thoroughly documented her attempts to find a rental apartment on her own beginning on February 3, 1993, and the evidence which she has presented indicates that the use of a real estate broker to find a rental apartment is customary in the Boston area. Also, Ms. Sacks is seeking only her share of the relocation fee, \$650, because her roommate paid her \$650.

The NLRB agrees with Ms. Sacks's assessment of the difficulty of finding a rental apartment in the Boston area, and has paid her \$350, the maximum allowed rate for a single person's miscellaneous expenses under 41 C.F.R. § 302-3.3(a)(1) (1992). The NLRB now wishes to pay Ms. Sacks an additional \$300, and requests a decision as to whether it has the authority to do so.

The FTR does not have any provision for the reimbursement of employees' real estate broker fees to help them find rental apartments.² However, 41 C.F.R. § 302-3.3 (1992) provides that an employee eligible for a miscellaneous expense allowance may be paid it under 41 C.F.R. § 302-3.3(a) (1992) (usually \$350 for a single employee), or under 41 C.F.R. § 302-3.3(b) (1992), but not both. The latter section, in relevant part, provides:

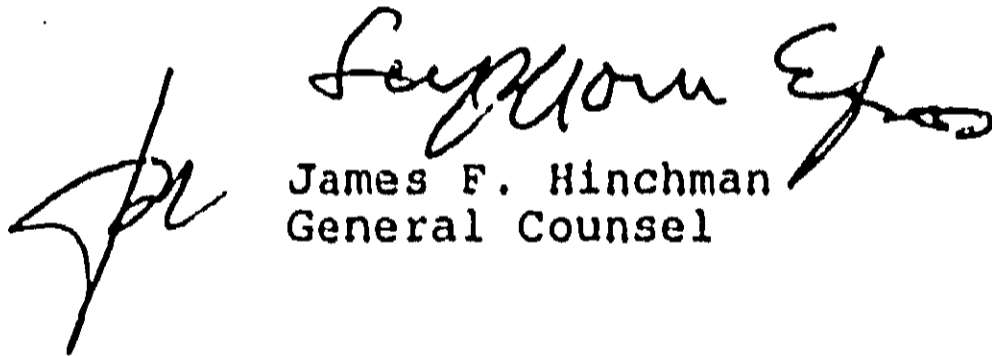
"(b) Allowances in excess of those provided in paragraph (a) of this section may be authorized or approved, if supported by acceptable statements of fact and either paid bills or other acceptable evidence justifying the amounts claimed, provided the aggregate amount does not exceed the employee's basic pay (at the time the employee reported for duty) for 1 week if the employee is without an immediate family, or for 2 weeks if the employee has an immediate family."

In this regard, we note that in situations where transferred employees are unable to find suitable housing without paying a fee to a real estate broker, and where the payment of such a fee is a customary practice in an area, we have allowed a real estate broker's fee to be reimbursed as a miscellaneous expense allowance under a predecessor section of the regulation quoted above. B-177395, Mar. 27, 1973.

²We note that 41 C.F.R. § 302-6.2(a) (1992) refers only to the purchase of a home at the new official station, and thus does not apply to the rental of an apartment.

In the instant case, personnel at the NLRB were apparently not initially aware of the possibility of using 41 C.F.R. § 302-3.3(b) (1992) and so Ms. Sacks only received a \$350 miscellaneous expense allowance under 41 C.F.R. § 302-3.3(a) (1992). In view of the extensive documentation which Ms. Sacks has provided and the NLRB's acceptance of her evidence and desire to pay the fee involved, we find that she should have been reimbursed under 41 C.F.R. § 302-3.3(b) (1992) provided that the use of a real estate broker to find a rental apartment is customary in the Boston area. Furthermore, to the extent that the additional expenses allowed by this decision increase Ms. Sacks's total allowable expenses over \$350, she may be reimbursed that additional amount under 41 C.F.R. § 302-3.3(b) (1992).³ In regard to payments under 41 C.F.R. § 302-3.3(b) (1992), we wish to emphasize that while agencies have the discretionary authority to pay miscellaneous expenses under that section, the entire amount claimed, including the amount otherwise payable without such documentation under 41 C.F.R. § 302-3.3(a) (1992), must be supported with appropriate evidence, as the text of 41 C.F.R. § 302-3.3(b) (1992) requires.

Accordingly, Ms. Sacks's claim for \$300 may be certified for payment provided that the NLRB determines the use of a real estate broker to find a rental apartment is customary in the Boston area.



James F. Hinchman
General Counsel

³See Andrew Fisher, 70 Comp. Gen. 487 (1991). See also Craig B. Anforth, B-247042, May 12, 1992.